



NO. 65, Original

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

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STATE OF TEXAS, *Plaintiff,*

v.

STATE OF NEW MEXICO, *Defendant,*  
and

UNITED STATES OF AMERICA, *Intervenor.*

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Before the Special Master: Charles J. Meyers

**PRETRIAL ORDER**

The proceedings in this matter shall be governed by the following order.

I. Hearing.

A Hearing on the disputed issues of fact listed below shall be held in Denver, Colorado, on November 18-22, 26-27 and if necessary on December 3-4, 1985.

II. Disputed Issues of Fact.

A. Texas Statement.

The computation of indicated departures.

1. What is the proper loss equation for channel loss, Artesia to Damsite 3, for the 1954-83 period?
2. What are the proper area-capacity relations to be used to compute evaporation losses from the McMillan and Avalon Reservoirs for the 1950-83 period?

3. Are the evaporation losses from Tansill Lake to be counted as depletions between the Carlsbad canal flume and the Carlsbad gage in the flood inflow computations for the 1950-83 period?

The causes of depletions.

4. During the 1950-83 period:

- (a) was there any increase or decrease in depletions due to man's activities above Alamogordo Dam and, if so, how much were they?
  - (b) were there any depletions resulting from construction of the training dike in Lake McMillan in the early 1950's and, if so, how much were they?
  - (c) were there any depletions above the stateline gage which are assignable to Texas and, if so, how much were they?
  - (d) were there any depletions above the stateline gage caused by the transfer of water rights from downstream of Alamogordo Dam to upstream of it and, if so, how much were they?
5. Are the indicated departures, if any, to be adjusted for the matters referred to in 4(a)-(d), above, to arrive at New Mexico's delivery obligations under the Pecos River Compact ("Compact") for the 1950-83 period?

B. New Mexico Statement.

The computation of indicated departures.

1. Whether the loss equation for channel loss, Artesia to Damsite 3, for the 1954-83 period shall be developed using the least absolute value procedure, as was done in defining the 1947 condition, or a modified least absolute value procedure.

2. Whether the area-capacity relation for a given sediment survey should be used to compute evaporation losses from the McMillan and Avalon Reservoirs until the next survey is available or whether a particular sediment survey should be used to compute evaporation losses for a period of years before and after the date of the survey.
3. Whether evaporation losses from Tansill Lake should be excluded as a depletion between the Carlsbad canal flume and the Carlsbad gage in the flood inflow computations as was done in defining the 1947 condition.

The causes of depletions.

4. During the 1950-83 period:
  - (a) was there any increase or decrease in depletions due to man's activities above Alamogordo Dam and, if so, how much were they;
  - (b) what were the depletions caused by the training dike constructed in Lake McMillan in the early 1950's;
  - (c) were there any depletions above the stateline gage which are assignable to Texas and, if so, how much were they?

### III. Disputed Issues of Law.

#### A. Texas Statement.

- a. Is New Mexico prohibited from reducing its delivery obligations under the Compact for reductions, if any, in depletions by man's activities above Alamogordo Dam?
- b. Are the depletions, if any, that were caused by the construction and use of the training dike in Lake

McMillan assignable as depletions due to man's activities?

- c. What is the appropriate form of relief for New Mexico's violations, if any, of its delivery obligations under the Compact for the 1950-83 period?
- d. Is prospective relief available and proper and, if so, what is its appropriate form?

B. New Mexico Statement.

- a. Should the procedures used to determine indicated departures for the 1950-83 period be consistent with the procedures used to determine the 1947 condition.
- b. Are Texas and New Mexico prohibited by the Compact or precluded by the prior rulings in this case from claiming adjustments in indicated stateline departures for any increase or decrease in depletions by man's activities above Alamogordo Dam.
- c. Are the depletions, if any, during the 1950-83 period that were caused by the construction and use of the training dike in Lake McMillan assignable as depletions due to man's activities.
- d. Whether the Pecos River Commission's findings on indicated departures for the 1950-61 period preclude Texas from litigating matters of fact that were previously resolved by the Commission.

[Paragraphs IV-VI omitted]

DATED: October 10, 1985.

/s/

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Charles J. Meyers  
Special Master